IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3684 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANEJTA VIBHAG YUVAK MANDAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3684 of 2002

MR MUKESH R SHAH for Petitioner No. 1

MS SONAL VYAS AGP for Respondent No. 1-2

MS MAMTA R VYAS for Respondent No. 3

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 07/08/2002

ORAL JUDGEMENT

#. The petitioner-Trust was granted recognition for

running secondary school at village Kanjeta in 1974. It was granted recognition for higher secondary school in 1988/87 for Standard XI & XII. In Dhanpur Taluka there was no Higher Secondary School having Science Stream and the policy of the State Government is to have one higher secondary school having Science Stream.

#. An advertisement was published in the local newspaper "Sandesh" on 13.11.2000 by the respondent No.2, inviting applications from different trusts for granting recognition to Standard XI Science Stream in their schools. As per the policy laid down by the State Government if there is no school in a radius of 10 kms., then application made by such trust would be accepted for grantable school. In pursuance of the advertisement dated 13.11.000 (Annexure-A) the petitioner trust applied for starting Standard XI (Science Stream) on 16.11.2000 (Annexure-B). The said application was considered by the Committee and the said Committee made the recommendation in favour of the petitioner-Trust for granting recognition for Standard IX Science Stream to the respondent No.1. When this petition was filed the decision of the respondent No.1 was awaited.

#. It is the case of the petitioner that respondent No.3-Pipero Vibhag Yuva Shakti Pragati Mandal also applied for recognition for running Standard IX Higher Secondary Science Stream. Neither District Education Officer nor Committee made their recommendation in favour respondent No.3. In fact, respondent No.2 by order dated 13.9.2001 dismissed the application of the respondent No.3 for granting recognition for Science Stream from June, 2001. Against the said impugned order passed by respondent No.2 the respondent No.3 preferred appeal before the respondent No.1, which was also dismissed by the State Government by order dated 5/15-11-2002 (Annexure-C).

#. Serious allegations have been made in this petition by the petitioner-Trust that the school run by respondent No.3 had no center for taking Standard X examination. Initially, it was granted recognition for starting Higher Secondary School i.e. Standard XI in 2000 for Uttar Buniyadi Stream only. However, Administrator of the said Trust Mr.Badiyabhai M. Gadiya was the President of Bharatiya Janta Party for Dahod District, who by using his political influence got Uttar Buniyadi School converted into Higher Secondary School (General Stream) from 2001 and the said school was also converted into Granted School. However, as stated earlier, the application made by respondent No.3 for granting

recognition of Standard XI (Science Stream) was rejected by District Education Officer, Committee as well as in appeal before the State Government. The respondent No.3-School was in vicinity of the school run by petitioner-Trust. In spite of the fact that the application of the petitioner trust was recommended by District Education Officer as well as the Committee constituted by respondent No.2 because of the political pressure the State Government was not taking any decision and granting recognition to the petitioner, therefore, the petitioner approached this court by way of Special Civil Application No.2879 of 2000, which was disposed of by my learned Brother D.K.Trivedi, J. on 26.2.2002 with a direction to the authority to take decision on the application of the petitioner as early as possible. While directing the authority to take decision His Lordship made it clear that the authority will not ignore the fact that the application as well as appeal of the respondent No.3 were rejected (Annexure-D). Instead of deciding the application of the petitioner at the earliest as directed by this court, the respondent Government was reconsidering the decision of granting recognition to respondent No.3 due to political pressure. If the recognition is granted to respondent No.3 for starting Standard IX (Science Stream) then the petitioner's application would become infructuous, therefore, the petitioner has approached this court by way of this writ petition and prayed therein that the respondent Nos.1 and 2 be directed to grant recognition to the petitioner-Trust for starting Standard XI (Science Stream) at village Kanjeta and restrain respondent Nos.1 and 2 from granting recognition to the respondent No.3 for starting Standard XI (Science Stream) at village Kanjeta.

#. This petition was filed on 1.4.2002 and moved before this court (Coram : A.R.Dave, J.) on 2.4.2002. On that day His Lordship issued notice to the respondent making it returnable on 15.4.2002 and by way of interim relief the respondent Nos.1 and 2 were restrained from granting recognition to respondent No.3 and to start Standard XI (Science Stream) regarding application of the petitioner, the respondent No.2 was directed to consider it before returnable date.

#. It seems that the State Government by its order dated 1.3.2002 (Annexure-F) granted permission to respondent No.3 to start Standard XI (Science Stream) with grant and subsequently by order dated 12.4.2002 (Annexure-E) rejected the application of the petitioner. Hence, this petition was amended and by way of amendment the impugned

orders at Annexures E & F are challenged in this petition.

#. Learned counsel Shri Shah for the petitioner-Trust vehemently submitted that though the application of the petitioner-Trust was duly considered and recommended by District Education Officer and by the Committee, still it was not granted permission to start Standard XI (Science Stream) with grant. Whereas, the application of the respondent No.3 was granted by the impugned order at Annexure-"F" dated 1.3.2002 though its earlier application was rejected by the District Education Officer as well as the Committee. Mr.Shah submitted that appeal against the same was also dismissed by the State Government. In spite of it without any application for review, the State Government granted permission to the respondent No.3 only because of the political pressure brought by the President of the respondent No.3, who is belonging to Bharatiya Janta Party.

#. The file was placed before me and from the said file it clearly appears that the decision was taken in favour of respondent No.3 only because of the oral order of the Hon'ble Education Minister though the application of the respondent No.3 was rejected by District Education Officer and the Committee as well. It is surprising to note that even there was no formal application for review of the order of the State Government. Once, the application is granted to respondent No.3-Trust then as per the policy of the State Government it cannot give permission to any other school within 10 Kms. radius. Therefore, the petitioner was denied permission by the impugned order dated 12.4.2002 at Annexure-"E".

#. It may be stated that the learned AGP Ms.Sonal Vyas frankly conceded that as per the oral directions and noting made on the file by District Education Officer, Hon'ble Education Minister, the permission was granted to respondent No.3-Trust and once the permission is granted to respondent No.3-Trust then no permission could be granted to any other school, therefore, petitioner-Trust was denied permission by the subsequent order at Annexure-"E".

##. Ms.Mamta Vyas appearing for respondent No.3 submitted that it is always open to the authority to review its own order because in the past the application of the respondent No.3 was rejected by the District Education Officer and the Committee that does not mean that the State Government is barred from reconsidering its own decision. It is true that the authority, which

has power to reject the application may have powers to review its decision, but that decision cannot be reviewed in arbitrary manner. In this case, there was no even formal written application made to the State Government for reviewing its own decision. When two competent authorities i.e. District Education Officer and Committee constituted by the respondent No.2 have also rejected the application of the respondent No.3 and that the appeal against that decision also dismissed by the appellate authority, then to grant permission to respondent No.3 without any basis or material change in circumstances it would render such decision nonest. Thus, I am of the considered opinion that the impugned order at Annexure-"F" passed by the State Government to grant permission to respondent No.3 is most arbitrary, therefore, it is required to be quashed and set aside.

##. Once the impugned order at Annexure-F is quashed and set aside then the application made by the petitioner-Trust which has been duly recommended by District Education Officer as well as the Committee constituted by respondent No.2 has to be granted. Therefore, the impugned decision taken by the respondent-State Government at Annexure-E not to grant permission to start Standard XI with grant has to be quashed because except the petitioner trust no one else applied in that area. Accordingly, while quashing the impugned order at Annexure-E rejecting the permission to start Standard XI (Science Stream) to the petitioner-Trust the respondent authorities are directed to grant permission to the petitioner-Trust to start Standard XI (Science Stream) in its school with grant, forthwith. Rule is made absolutely accordingly with no order as to costs. D.S. permitted.

(B.J.Shethna, J.)
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